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## **THE DISTINCTIVE FEATURE OF ASSESSED TAXATION AND RECORDING CHARITIES: REGULATORY LEGAL ASPECT**

*Current status of legislative regulation of philanthropy in Ukraine does not provide public access to charitable assistance in cases and volumes, guaranteed by the Constitution and laws of Ukraine. In particular on social protection and security, health care, safe and healthy environment, adequate standard of living. Securing these rights exclusively the actions of institutions and organizations financed from the state and local budgets, is clearly insufficient and often ineffective. That charity individuals - from neighbors and employers to the international foundations - is a prerequisite for flexibility, targeting and innovation in ensuring these rights; and for certain social groups, charity work is almost the only available source of operational and social assistance. This article analyzes the legal aspect of philanthropy in Ukraine, namely Taxation and Accounting charity.*

**Keywords:** charity; legal aspects; taxation; accounting.

According to the changes of political and economic system in Ukraine the process of revitalization of citizens not only in the entrepreneurial activity but also in the social sphere was begun. The devolution from administrative-command system to the market economy was marked by the process of worsening economic meltdown. Together with the revival of entrepreneurship it was increased the process of stratification of society and turned out to some groups that they need assistance and protection. In recent years the state tried to solve the problems of social safety net for the

individuals and today it faced with the need of attracting for solving these problems with help of the nongovernmental entities [1, c. 1].

Formation of civil society in Ukraine is accompanied by increasing of social and public activity of citizens and it is manifested in the formation of a large number of non-governmental organizations that are intended to solve many significant social problems. And not much credits need to be done in order to point the fact that only guarantee for the formation of civilized democratic society is the creation of independent non-profit sector in our country, especially today, when achieving social harmony is possible only through charity and social responsibility. Renaissance in Ukraine of charitable private sector will allow to withdraw from absorbing the costs and responsibility for the solution of many social problems, which practically cannot be solved.

Problems connected with development of charity in the Ukrainian society were investigated by various scientists. The bases of their research are scientific papers of K. Abramovich, N. Belyaev, L. Bibnij, V. Borisov, M. Bragin, S. Bratus, S. Voronin, Y. Gambari, E. Hendzehadze, P. George, V. Guerrier, A. Goyhbar, A. Gordon, A. Zeri, K. Ilyinsky, A. Joffe, V. Kachanov, T. Korzhyhyn, N. Kozlov, G. Kravchenko, I. Krasko, N. Kuznetsov, G. Kudryavtsev, O. Lytvyn, E. Maximov, A. Malyayev, N. Mishchenko, R. Naryshkin, T. Popov, A. Pushkin, P. Seduhin, A. Symonin, I. Sokolov, I. Thanks-Fateeva, A. Stepankohoh, D. Subbotin, E. Sukhanov, Y. Shevchenko, A. Sherstybitova, G. Shershenevich, D. Shutko, L. Schennikov, A. Schiglick, R. Schischcka, C. Yampolska and others.

Charity is the powerful tool that can help many people who are in need. But the rational use of charity it's not as easy as it might seem at first sight. And if business is able to accumulate charitable donations from their activities and only professionals should implement the good deeds in life [2]. Therefore, there are organizations that perform various functions unrelated to commercial activities in every developed country. The goal of such organizations is not profit, and in generally, it is helping the poor. They are engaged in the development of sport, culture, charity, politics, etc. [3].

Non-profit organization is the independent economic entity with the rights of legal entities and operates prescribed statutory instruments; they have a seal, independent balance, current bank accounts. Classification of non-profit organizations is in p. 7.11.1 article 7 of the Law of Ukraine "about profits".

The characteristic feature of nonprofit organizations consists in the fact that according to the Law of Ukraine "On Enterprises in Ukraine" from March 7, 1991 № 887-XII, the activities of non-profit organizations, as opposed to enterprises engaged in any business activities for profit, aimed at non-profit business activities and are not entrepreneurial activities [4].

It needs to examine more the activities of charitable organizations. Implementation of charitable activity in Ukraine is regulated by the Law “about charity” [5].

The organizational forms of charitable organizations are defined in article 6 of the Law “about charity”. Charitable organizations can be established as membership charities, charitable foundations, charities and other charitable organizations (foundations, missions, leagues, etc.).

Before the beginning of charitable activities, the organization shall acquire the corporate existence. After receiving the certificate about registration, the charity as any entity requires to be registered in the state tax service on its location. For this purpose during the month it must submit the registration statement on Form 1-RN for inclusion in the Register of nonprofit organizations and agencies exempted from tax, and determining the structure of non-profit organization. Charitable organizations are assigned the special code and it is 0005.

However, it needs to remember when charitable organization takes any part in the elections or advertising of the particular political party or individual for elective post, income or assets of the charitable organization used to obtain benefits or advantages of any individual or legal entity besides benefiting appropriate recipients of charitable aid. In this case the charitable organization will not be considered as such according to the Decree of the Cabinet of Ministers of Ukraine.

Charities may not be registered as payers of added-value tax on acquired assets (VAT) if they are not operating the results of which are taxable by this tax [6].

Under the gratuitous transfer should understand the providing goods (works, services) of charity aid without any financial, material or other types of compensation such charity recipients or other persons associated with them. Violation of this rule is equated with deliberate tax evasion. Providing charity care (free transfer of goods (works, services)) to charities in order to use this assistance to charitable purposes, and the operation of the free transfer of goods (works, services) of charity aid exempted from VAT.

No exemption from tax operations with charitable assistance in the form of goods (works, services), taxable excise tax, securities, intangible assets and goods (works, services) for use in business, listed by the Cabinet of Ministers of Ukraine.

According to the article 19 of the Law “about charity” the sources of funds and property forming charitable organization are:

- contributions of founders and other benefactors;
- charitable contributions and donations that are targeted (charitable grants) provided by legal entities and individuals in the monetary;

– proceeds from the charity campaigns of collecting donations, charitable events, charitable lotteries and charitable auctions with sale of property and donations received from philanthropists;

– income from deposits and securities, income from enterprises (organizations) that are owned by the charitable organization;

– other sources not prohibited by the legislation of Ukraine.

It should be noted that the source of funds and property can not be obtained the credits. In addition, property funds and charitable organizations can not be pledged.

If the charitable organization operates only by membership dues and donations, it is exempt from paying taxes and other payments to the budget and special funds.

Charitable organization according to their status is intended to carry out charitable activities and obtained funds and property can not be spent for purposes that are not provided by the charter. Spending of received funds is strictly limited by law. They can be used only for charity and software business. Thus, according to the article 16 of the Law “about charity”, charitable assistance can be granted by charity aid in following forms: disposable financial, material and other assistance; systematic financial, material and other assistance; financing specific programs; assistance for the basis of agreements (contracts) about charitable activities; donation or permission for free (preferential) use of property charitable organization; providing help by personal work, services or transferring of results of personal creative activity; the implementation costs of free, complete or partial maintenance of philanthropy.

If charitable organization provides specific services (performing works) that are subject of mandatory certification or licensing, the implementation of these activities is possible only after obtaining the relevant documents. According to article 1 of the Law “about charity”, charity aid may be provided for natural and legal persons who are in need for charitable assistance. The heads of charitable organizations must remember that in accordance with paragraph 3, article 5 of the Decree of the Cabinet of Ministers of Ukraine any income or assets of the charitable organization can not be used to benefit of any natural or legal person except the directly benefiting charity care. Moreover, the founders and employees of the charitable organization can not receive tangible benefits and additional costs in connection with their position in the organization, except cases provided by the Law “about charity”.

Types of charitable assistance for its intended purpose are targeted and inappropriate. According to subparagraph “i”, point 1, article 5 of the Decree of the Cabinet of Ministers of Ukraine charitable support provided to citizens is aid in the form of reimbursement on: payment the cost for

treatment of persons, including the purchase of medicines, donor components, prosthetic and orthopedic devices; education (training) and retraining in educational charity aid registered as unemployed; for the maintenance of charity aid which has not reached the age of 18, in the preschools, boarding and on the payment for the maintenance of the purchaser in rehabilitation centers or training in music schools or schools of arts; the maintenance and social adaptation of disabled and elderly citizens in institutions designated for such maintenance and social adaptation; food and accommodation for people who have no housing, schools, providing such services; improving living conditions and medical treatment of persons staying in penitentiary institutions of Ukraine; holding of charity aid research and development under the condition that the results are subject of publicity and can not be the subject of patents or other restrictions on the disclosure or the free distribution of intellectual (industrial) property; person who is the member of amateur sports organization, club or individual athlete amateur sports for purchasing tools and equipment.

Targeted charity aid may be paid in cash and in the cashless payment, also as payment for the costs of charity care. In order to receive such assistance the citizen should apply to the charitable organization with the application and required documents for rendering charitable assistance.

Non-targeted charitable financial assistance is assistance providing for citizens with incomes below the officially established minimum of monthly subsistence level (including income from other sources). Non-targeted charitable assistance can be provided for unemployed, pensioners, people with large families, the disabled, and persons recognized incapable, orphans, persons who get housing subsidies, persons with status of refugees or who are from the number of the deported peoples. In order to receive non-targeted aid charity citizen must apply to the charitable organization with application, which stated the amount of income for the month. While non-targeted spending funds transferred to the account of the charitable organization in favor of the acquirer, such charitable organization according to the results of the tax period is responsible for not charging or untimely transfer of income tax to the budget.

In addition to direct costs for providing charity care and also providing costs for the maintenance of the charitable organization. The amount of such costs can exceed estimates of 0 % in the current year. Besides the labour legislation of Ukraine, social security and social insurance applies for the employees of the charitable organization.

Charitable activity is carried out in various forms in the society. Each person is able to deal with individual charity and it usually implemented in such forms as charity, volunteering, contribution to charities, participate in various charity events. In our time entrepreneurs and business organizations,

institutions represented dealing with the private charity in the form of patronage, sponsorship, grants or charitable foundations. The state also provides assistance in the form of guardianship, but in the literature there is no consensus about fact that the charity is the activity of state structures.

In charity increasingly active are charitable foundations that established as commercial enterprises and organizations of the third sector (non-profit and non-governmental organizations) in the world. Charitable funds are divided into corporate and private foundations and even funds of local communities. Private funds are created from individuals funds in banks or placed in stocks, and capital gains are going to charity. Among the most famous private foundations is Ford Foundation, based on the legacy of the entrepreneur Henry Ford. Private foundations are independent donors such as the Ford Foundation depends on the company or the Ford family and Ford carries out its activities under the leadership of the international Board of Trustees [7].

Corporate funds are also donors and they are created and financed of its charitable programs. These funds are independent, unlike private foundations and local communities are directly dependent on the goals and priorities that company puts.

Funds of local communities are the fund created for the problems in the particular area. These funds accumulate funds to address these issues that come from different sources, private donations from public funds to municipal budget. Charitable foundations are central in the Institute of Charity. They create accumulation and further redistribution of the funds allocated by donors for charitable purposes. The important step is the question about motivation of benefactors in its activities. First of all, it should be noted that a person makes goodness, based on their own moral and spiritual principles. Ideally, people's charitable activities should encourage such feelings as compassion and mercy, compassion and even strange affliction, which causes desire to help one's neighbor. There are other motives that push numbered foregoing to another plan. Today, in the era of market economy, benefactors may be guided morality and the idea of benefit to some extent. For example, charitable activities should promote advertising, creating a favorable image, good name, which is especially important for businesses and parties. The point is that charitable action is interpreted as the action that has a positive moral value, and estimated by the consciousness of people as something good. That's why the person who is engaged in charity regarding as the creator of good, worthy of trust. In some way this fact creates positive reputation that can be used for certain purposes. It can be concluded that the charitable activities is encouraged by the variety of reasons Some people engage in charity because of mercifulness and other because of personal gain.

**REFERENCES:**

1. Чепурнов В. О. Правовий статус благодійних установ та товариств за законодавством України : дис. ... канд. юрид. наук : 12.00.03 / Чепурнов Вадим Олександрович. НАН України; Інститут держави і права ім. В. М. Корецького. – К., 2004.
2. Благодійництво та бізнес // Інтернет-сайт: Хмельницький благодійний фонд [Електронний ресурс]. – Режим доступу : <http://www.hesedbesht.org.ua/blagodijnictvo-ta-biznes/>.
3. Енциклопедія Добročинності // Бух. облік благодійної організації Інформаційний портал благодійної організації “Твердиня” [Електронний ресурс]. – Режим доступу : <http://tverdunya.org.ua/materialu/stati/byhoblk-blagodino-organizac/61-osobluvostiobliku>.
4. Про підприємства в Україні : Закон України від 7 берез. 1991 р. № 887-ХІІ.
5. Про благодійну діяльність та благодійні організації : Закон України від 5 лип. 2012 р. № 5073-VI [Електронний ресурс]. – Режим доступу : <http://www.zakon.rada.gov.ua>.
6. Податковий кодекс України від 2 груд. 2010 р. № 2755-VI (із змінами) [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/2755-17>.
7. Завдання благодійності [Електронний ресурс]. – Режим доступу : <http://bukvar.su/sociologija/70977-Zadachi-blagotvoritel-nosti.html>.